

comparative sale is unwarranted we have proceeded to consider his arguments in detail.

The applicant's supplemental contention, presented through his counsel and not his valuer, rests on the sale price of six pieces of land consisting of one 14 acre lot, two 8 acre lots, two 5 acre lots of which one was sold for \$20,000.00. The rest of the lots were transacted at \$15,000.00. The 14 acre lot is directly adjoining to the acquired land and the rest of the lots are contiguous to the last mentioned lot. Counsel contends that these are the best comparisons available since the lots are nearest and indeed one is adjoining to the acquired land. We disagree with this proposition. It must be noted that although the six lots were cited in this case, they are in truth involved in one single transaction of contiguous lots of one buyer made within minutes of each other. The transfers took place in 1981, *i.e.*, one year and seven months after the acquisition by which time prices of lands had appreciated considerably. Furthermore it is a well-known fact that buyers are inclined to pay more for contiguous lots which could be developed into a large housing estate. In this instance, the five contiguous lots when taken together will give the buyer the development potential of a 42-acre lot. Then there is also the possibility of the buyer having obtained planning permission before the sale.

I am unable to accept that the sums paid by a common buyer for six parcels of land during what in fact was a single transaction in land is a proper guideline for measuring the market value of lands. As mentioned earlier even the inclusion of this transaction to those listed by the Treasury Valuer would place the average value of the land in this neighbourhood to be around \$6,000.00 to \$6,500.00 — an amount which was awarded to the applicant. Assuming this to be the value of lands in that locality, I would give it no more than 10 to 15% increase in excess of its awarded value.

To restate shortly the above conclusions. First, I accept the valuation by the Treasury Valuer based on comparative sales in preference to the mere personal opinion of the applicant's valuer. Secondly, even if the unproved transaction provided by the appellants' counsel is to be considered, the nature of the records of dealings substantiate that the sales were in actuality a single transaction in lands. Thirdly, if I am wrong as to my previous conclusions, I did consider and find that the Treasury experts' valuation of the acquired land to be more correlative, authentic

A and acceptable to me in relation to the time, period and nature of the surrounding land than that of the applicant's citation of six parcels of land sold within minutes of each other almost two years after the acquisition. As indicated earlier, the valuation of \$6,500.00 per acre of the applicant's land appears to be more realistic to me having regard to its shape, location, size, cultivation and use at the time of acquisition. *Albeit*, bearing in mind that no comparative sales cited can perfectly designate the commensurate value of the acquired land, both the assessors and I feel that we would lean slightly in favour of the applicant to regard the acquired land as the best among equals in that locality and we therefore determined its market value at \$7,400.00 per acre, *i.e.*, almost 14% increase over and above the awarded value.

D The applicant shall pay the costs of this application including the fees assessed at \$100.00 per day in respect of each assessor for two days.

R.K. Pragasam and Ong Bun Seong, Assessors, concurred.

E *Order accordingly.*

Solicitors: S.K. Khoo & Tan Tiak Tiok.

GOH BAK TUN v. KUCHING PORT AUTHORITY

G [O.C.J. (Tan Chiaw Thong J.) May 27 & June 8, 1985]

[Kuching — Suit No. KG. 209 of 1984]

Practice and Procedure — Application to strike out and dismiss action — Parties agreed point for decision — Whether defendant an industry belonging to State Government — Whether gazetted exemption applicable — Employees' Social Security Act, 1969, ss. 2(10), 31, 42, 98 & 100 — Port Authorities Ordinance, 1961, ss. 4, 5(1), 9(6) & 11 — Sarawak Interpretation Ordinance, s. 8(1) — Interpretation Act, 1967, s. 19.

I In this case, the plaintiff had filed a writ on October 26, 1984 against the defendant claiming damages arising out of physical injuries sustained by him on November 7, 1981 in the course of his employment. The defendant applied to have the writ and statement of claim struck out and dismissed with costs. The parties had agreed that the sole point that called for decision was whether at the material time the defendant was an industry belonging to the State Government of Sarawak. By virtue of the exemption (P.U.(B) 643/1983) made by the Minister under

section 100 of the Employees' Social Security Act 1969, all industries belonging to the Federal and State Governments were exempted from the operation of that Act from January 1, 1983.

Held, allowing the defendant's application: the defendant was not an industry belonging to the State Government of Sarawak and even if it were, the exemption relating thereto gazetted under P.U.(B) 643 of 1983 did not apply to the circumstances of this case.

APPLICATION.

Chan Kay Poh for the plaintiff.
Miss P. Phang for the defendant.

Cur. Adv. Vult.

Tan Chiaw Thong J. : This is an application by the defendant for an order that the Writ of Summons and the Statement of Claim in this action be struck out and dismissed and that costs be awarded to it. The grounds of the application are as follows:

- (1) The plaintiff is an "insured person" within the meaning of the provisions of the Employees' Social Security Act, 1969 and has been awarded and received compensation from the Social Security Organisation; and
- (2) The action herein is hence barred by virtue of the provisions of sections 31 and 42 of the Employees' Social Security Act, 1969.

In this action the plaintiff as employee is suing the defendant as employer for damages arising out of physical injuries sustained by him in the course of his employment. The cause of action is based on negligence and/or breach of duty of the defendant, its servants or agents.

The defendant's application is supported by an affidavit affirmed by Raphael Nissom, the Deputy General Manager of the defendant. The plaintiff has filed two affidavits in opposition and the defendant two further affidavits, one affirmed by Chou Chii Ming, the Secretary/Accountant of the defendant, and the other by learned counsel for the defendant.

The parties have agreed that the sole point that calls for decision by the court in connection with the defendant's application is whether at the material time the defendant was an industry belonging to the State Government of Sarawak. If the answer is in the affirmative, then the plaintiff is not debarred from bringing this action by virtue of the exemption (P.U.(B) 643/1983) made by the

A Minister concerned under section 100 of the Employees' Social Security Act, 1969 (the SOCSO Act) exempting all industries belonging to the Federal and State Governments from the operation of that Act from January 1, 1983, subject to the decision of this court relating to the point raised by learned counsel for the defendant as to whether **B** on the date of the institution of this action in relation to which the writ was filed on October 26, 1984, the plaintiff was debarred from suing the defendant under the common law having regard to the fact that the physical injuries to the plaintiff occurred on November 7, 1981. **C**

For the purpose of these proceedings it is not disputed that the physical injuries sustained by the plaintiff concerned in this action occurred on November 7, 1981. It is also not in dispute that on this date the plaintiff was working as an employee **D** of the defendant. In view of the agreed legal issue to be decided by this court, what has to be decided are (a) whether the defendant is an industry; and if so (b) whether it belongs to the State Government of Sarawak; and (c) whether the exemption under section 100 of the SOCSO Act applied on the date **E** when the cause of action arose thus not having the effect of barring the plaintiff from bringing this action against the defendant.

As to whether the defendant is an industry, it was submitted by learned counsel for the defendant **F** that the answer should be in the negative because (a) it is a statutory body, and (b) if the defendant were an industry within the meaning of the SOCSO Act, then a letter exhibited as "CCM 2" to the affidavit of Chou Chii Ming would not have been necessary. As to this second point, the said exhibit "CCM 2" and the English translation thereof **G** Ex. "PP 2" attached to the affidavit of learned counsel for the defendant do not state by virtue of which section or sections of the SOCSO Act the exemption granted therein was based but it is headed "Exemption for Employees in Statutory Bodies". It has to be considered whether the exemption contained therein has statutory force. **H** An examination of the SOCSO Act leads to the conclusion that it would appear that the exemption dealt with in "PP 2" and "CCM 2" was granted by virtue of section 98 of that Act which empowers the Minister by notification in the Gazette and subject to such conditions as he may deem fit to impose, to exempt any person or class of persons employed in any industry or class of industries to which the SOCSO Act applies from the operation of that Act. It is to be noted that to have statutory force, the notification must be gazetted, as required **I**

by section 98. Although the penultimate paragraph of "PP 2" and "CCM 2" mentions the publication of the necessary *Gazette* notification "in due course", searches made for the existence of the proposed *Gazette* notification have yielded no positive result; and my attention has not been drawn to its existence by learned counsel for the parties. Hence, I am of the view that in the absence of any such *Gazette* notification, although "PP 2" and "CCM 2" may have administrative force, they have no statutory or legislative effect. Hence, I am unable to, and will not, take into account the exemption mentioned in "PP 2" and "CCM 2" for the purposes of these proceedings.

Learned counsel for the plaintiff on the other hand has contended that the defendant is an industry within the meaning or definition of "industry" contained in section 2(10) of the SOCSO Act in that it is a business, trade, or undertaking and hence, even though the defendant is a statutory body it is nevertheless an industry. In my view, irrespective of whether the defendant is a statutory body, or business or trade, it would appear to be an "undertaking" within the meaning ascribed to the expression "industry" in section 2(10) of the SOCSO Act. The word "undertaking" in that definition is not defined in the SOCSO Act. In the *Oxford English Dictionary* the word "undertaking" is defined as (a) enterprises; energy; and (b) an action, work etc., undertaken or attempted; an enterprise. In this instance, I am of the view that whatever status it may otherwise have, the defendant is an enterprise and hence is an undertaking within the definition of "industry" in section 2(10) of the SOCSO Act. Accordingly, in my opinion, the defendant is an industry within that meaning.

The other and second matter to consider is whether, on the basis that the defendant is an industry, it is an industry "belonging" to the State Government of Sarawak. It was submitted by learned counsel for the plaintiff that the answer should be in the positive. In this connection, learned counsel for the defendant has submitted that in relation to the exemption granted under section 100 of the SOCSO Act and gazetted as P.U.(B) 643 of 1983, such an exemption would only apply if it is shown that the employees of an industry to which it applies are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the SOCSO Act. In my view, the short answer to this argument is that in publishing the notification of exemption in the *Gazette*, the Minister must have previously

A satisfied himself of this requirement having been fulfilled. The word "belonging" is not defined in the SOSCO Act but in *Stroud's Judicial Dictionary* (4th Edn.) Vol. 1 at page 269, the word "belong" is defined, *inter alia* as a thing, or right, which is said to "belong" to a person, and connotes either ownership or the absolute right of user; and with respect to the definition of "belonging" at the same page it is stated that property "belonging" to a person, has two general meanings, (1) ownership, (2) the absolute right of user. In this connection, having regard to the provisions of the Port Authorities Ordinance (Ordinance No. 1 of 1961) under which the defendant was established, and the scheme relating to Port Authorities thereunder, it seems clear that the State Government of Sarawak has no absolute right of user to the defendant. It therefore falls to be considered as to whether the defendant is owned by the State Government of Sarawak. In this connection, the *Oxford English Dictionary* defines "owner", *inter alia*, as one who owns or holds something as his own; a proprietor; one who has the rightful claim or title to a thing (though he may not be in possession). In this connection, can it be said that the defendant is owned or is held by the State Government of Sarawak as its own, or that the State Government is a proprietor of the defendant or has the rightful claim or title to the defendant? To provide an answer, one has, in my view, to examine the provisions of the Port Authorities Ordinance, 1961, and the purposes for which it was enacted. It is true in my view that under the provisions of that Ordinance, the State Government of Sarawak either through the Minister concerned or the Yang di Pertuan Negeri in Council has a large measure of control over the defendant. G For instance, it has the power to appoint members of the defendant (see section 4); it has the power of giving approval to transfer or charge any immovable property of the defendant (see section 9(6)); it has the power to give to the defendant directions of a general character not inconsistent with the provisions of the 1961 Ordinance as to the exercise and performance of functions of the defendant in relation to matters which appear to affect the interests of Sarawak (see section 11); and it has a large measure of control over financial matters of the defendant (see Part IV of the 1961 Ordinance). However, despite all these factors, the point to consider is whether the defendant can be said to be owned by the State Government of Sarawak by holding the defendant as its own or by being a proprietor thereof or by having the rightful claim or title to the defendant. In this connection, it is clear that the defendant is a statutory body

established by the 1961 Ordinance. It is a body corporate having perpetual succession and a common seal, and power to purchase, acquire, hold, manage and dispose of immovable and movable property, and to sue and be sued in its corporate name (see section 5(1)). It seems clear that despite a large measure of control by the State Government of Sarawak, the defendant is entrusted with functions set out in section 9 of the 1961 Ordinance included in which is the function of maintaining adequate and efficient port services and facilities for all users of the Port of Kuching. Further, it has a separate legal existence and the State Government of Sarawak cannot be held vicariously liable for any of its acts or omissions. In my view, it cannot be said to be owned by the State Government of Sarawak in the ordinary sense relating to ownership or proprietorship of property or thing; nor can it be said that that Government has a rightful claim or title to the defendant. Indeed, learned counsel for the plaintiff in my view has advanced no convincing reason why the defendant should be regarded as belonging to the State Government of Sarawak.

For the reasons given, I am of the view that the defendant would appear to be an industry within the meaning of the SOCSO Act; but it is not an industry belonging to the State Government of Sarawak and hence would not fall within the exemption gazetted in section 100 of the SOCSO Act (P.U.(B) 643 of 1983).

It was contended by learned counsel for the defendant that even if the exemption under section 100 of the SOCSO Act is applicable, it came into effect on January 1, 1983 as expressed in the *Gazette* notification, and since the events giving rise to the action of the plaintiff against the defendant occurred on November 7, 1981, the said exemption had not come into force then and hence, at all material times the plaintiff was covered under the SOCSO scheme. It was further submitted that by virtue of section 8(1) of the Sarawak Interpretation Ordinance the exemption came into operation on the expiration of December 31, 1982. With respect, I do not consider the Sarawak Interpretation Ordinance as the relevant law of interpretation to refer to, but it should be the Federal Interpretation Act, 1967, since the SOCSO Act is a Federal law. In this connection, in my view, the relevant provision is section 19 of the Federal Interpretation Act, 1967 which contains similar provisions to those in section 8(1) of the Sarawak Interpretation Ordinance. It is clear that the exemption under P.U.(B) 643 of 1983 is

- A expressed to come into effect on January 1, 1983. It is also not in dispute that the events giving rise to this action occurred on November 7, 1981 before the operation of the exemption. On this basis, therefore, unless it can be shown that the cause of action was covered by the exemption, such an exemption would not apply thereto. In this connection, learned counsel for the plaintiff has submitted that the relevant matter to consider is whether at the date of the institution of this action the exemption applied and not whether the said exemption did not apply on the date of the occurrence of the events giving rise to this action. In my view, the said *Gazette* notification expresses in clear terms that the exemption to which that *Gazette* notification relates came into operation on January 1, 1983. Applying the ordinary rules of construction, considered in the light of section 19 of the Federal Interpretation Act, 1967, the exemption does not cover events relevant to the SOCSO Act to which that Act applied before January 1, 1983, so that, in my view, if, as here, the events giving rise to the application of the SOCSO Act occurred before January 1, 1983, such events cannot be said to be covered by the exemption of section 100 if they form the basis of an action instituted after January 1, 1983. Hence in my view, the SOCSO scheme still applied to the plaintiff at the time of the institution of this action.
- F In the premises, and for the reasons given, I am of the view and hold that the defendant is not an industry belonging to the State Government of Sarawak and even if it is, the exemption relating thereto gazetted under P.U.(B) 643 of 1983 does not apply to the circumstances of this case. Accordingly, the application of the defendant succeeds and an order is made in terms as prayed.

Order accordingly.

Solicitors: *Chan & Chan; Reddi & Co.*

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